SURREBUTTAL TESTIMONY AND EXHIBITS OF

DAN J. WITTLIFF, P.E., BCEE

ON BEHALF OF

THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF

DOCKET NO. 2018-319-E

IN RE: APPLICATION OF DUKE ENERGY CAROLINAS, LLC

FOR ADJUSTMENT IN ELECTRIC RATE SCHEDULES AND TARIFFS

AND REQUEST FOR AN ACCOUNTING ORDER

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.

A. My name is Dan Wittliff. My business address is 919 Congress, Suite 1110, Austin, Texas 78701. I am employed by GDS Associates, Inc. as Managing Director of Environmental Services.

Q. DID YOU FILE DIRECT TESTIMONY AND EXHIBITS RELATED TO THIS PROCEEDING?

A. Yes. I filed direct testimony and nine (9) exhibits with the Public Service Commission of South Carolina ("Commission") on February 26, 2019.

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A. The purpose of my surrebuttal testimony is to respond to the rebuttal testimony filed by Duke Energy Carolinas, LLC ("DEC" or "Company") witness Kerin on March 12, 2019.

Q. ON PAGE 3, LINES 11-13 OF COMPANY WITNESS KERIN'S REBUTTAL TESTIMONY HE STATES: "MR. WITTLIFF CONTENDS THAT SOUTH CAROLINA CUSTOMERS SHOULD NOT PAY FOR THAT COMPLIANCE BECAUSE, IN HIS VIEW, CAMA IS TOO EXPENSIVE." DOES THAT ACCURATELY REFLECT YOUR TESTIMONY?

A. No. Kerin mischaracterizes my position as: South Carolina customers should not pay for CCR costs associated with CAMA because it is "too expensive." My actual position, and clearly stated in my testimony, is that South Carolina customers should not pay for the incremental increases in costs imposed by CAMA **above** the federal requirements. South Carolina customers should reasonably expect to pay their fair share of the base amount required to comply with federal CCR Rules but not the incremental increase imposed by North Carolina on plants in that state's jurisdiction. South Carolina ratepayers should also reasonably expect to pay their fair share of any CCR approaches negotiated with or required by the State of South Carolina.

Q. ON PAGE 4, LINES 12-13 OF HIS REBUTTAL TESTIMONY, COMPANY WITNESS KERIN, REFERRING TO MY TESTIMONY IN NORTH CAROLINA, GOES ON TO STATE: "THOSE ARGUMENTS WERE FULLY LITIGATED, AND FOR GOOD REASONS REJECTED IN THE NORTH CAROLINA CASE." DOES THIS ACCURATELY REFLECT THE DECISION MADE BY THE NORTH CAROLINA UTILITY COMMISSION ("NCUC")?

A. No. Finding of Fact #71 in NCUC Docket No. E-7, Sub 1146 (Surrebuttal Exhibit DJW-1) states: "Under the present facts, a management penalty in the approximate sum of

$70 million is appropriate with respect to DEC's CCR remediation expenses accounted for in the earlier established Asset Retirement Obligation (ARO) with respect to costs incurred through the end of the test year, as adjusted." The fact that a very significant management penalty was imposed by the NCUC can only lead to the conclusion that my arguments regarding the Company's actions were strongly considered by the NCUC.

Q. ON PAGE 6, LINES 6 THROUGH 23 OF DEC WITNESS KERIN'S REBUTTAL TESTIMONY, HE STATES THAT "THE FIRST TWENTY-NINE PAGES OF MR. WITTLIFF'S TESTIMONY LARGELY MIRROR HIS TESTIMONY IN THE NORTH CAROLINA CASE AND THE RHETORIC RECYCLED IN THOSE PAGES HAS NOTHING AT ALL TO DO WITH THE THEORY THAT HE IS ATTEMPTING TO ADVANCE HERE." DO YOU AGREE WITH THIS CHARACTERIZATION?

A. No, I do not. While a good deal of the information on pages 11 through 32 of my Direct Testimony was also presented in the North Carolina hearing on this case, the primarily historical information in Sections III and IV is presented in this docket to provide background and context to the Commission. None of the historical information provided in my direct testimony has changed. In this manner, the Commissioners are informed as to how we got to this place and time. This rate case and the parallel case filed by Duke Energy Progress, LLC are the first time this Commission will deal in a dispositive manner with the CCR costs being accumulated in the ARO and non-ARO accounts. This historical information is useful for evaluation of the expenditures DEC claims for reimbursement. It is also noteworthy that witness Kerin has lifted more than three quarters of his testimony

in this proceeding from his earlier testimony in the DEC rate case in North Carolina. It is irrelevant that information used in my previous testimony from the North Carolina case is also stated in the current proceeding.

Q. ON PAGE 8, LINES 6 AND 7 OF DEC WITNESS KERIN'S REBUTTAL TESTIMONY, HE STATES THAT "MR. WITTLIFF'S POOR POLICY PROPOSAL LACKS FUNDAMENTAL FAIRNESS." IS THAT ASSERTION CORRECT?

A. Not at all. I used the cost and schedule data provided by DEC through their filed exhibits and responses to eleven (11) rounds of interrogatories as the foundation of my recommendations for allowances and disallowances of claimed costs. Furthermore, I relied on witness Kerin's approach for conducting CCR closure engineering and planning activities simultaneously across the system to determine how much of the costs related to engineering and planning should be allowed at this time. While I recommended that the CCR costs associated with Riverbend to date be disallowed, I recommended DEC be allowed to seek reimbursement of these and other costs associated with Dan River and Buck should the federal CCR rules change to require such closure methods. Specifically, I stated in my Direct Testimony "[i]f DEC can demonstrate that it has prudently incurred expenses dictated by compliance with the CCR Rules as they stand at the time of its next rate case, any expenses required by the CCR Rule as a stand-alone document (i.e., absent CAMA) and determined to be prudently incurred should be considered for recovery in that forum." To allow DEC to seek additional recovery should the federal CCR rules or

applicable conditions change in the future is fair. DEC should not be allowed recovery now for speculative changes in the federal CCR rules.

Q. ON PAGE 9, LINES 14-17 OF DEC WITNESS KERIN'S REBUTTAL TESTIMONY, HE STATES: "THE SUGGESTION THAT DUKE ENERGY CAROLINAS COULD OR WOULD HAVE TAKEN A 'DO NOTHING' APPROACH TO RIVERBEND'S ASH BASINS, WHILE AT THE SAME TIME CLOSING ALL OF ITS OTHER ASH BASINS IN SOUTH CAROLINA AND NORTH CAROLINA DEFIES REGULATORY REALITY." DO YOU CONCUR WITH THIS STATEMENT?

A. No. Given DEC's past performance, especially as evidenced by the Dan River ash release, it is reasonable to assume that the Company would have continued its "do nothing" approach absent any regulation forcing it to do otherwise. The work undertaken at W.S. Lee which witness Kerin cites later in his rebuttal testimony was imposed upon the Company by a consent agreement (SCDHEC Consent Agreement 14-13-HW) issued on September 29, 2014 (Surrebuttal Exhibit DJW-2), less than eight months after the February 2014 incident at Dan River. As noted previously, this incident occurred as a direct result of DEC's admitted negligence at Dan River. Had the Dan River incident not occurred, it is entirely reasonable to conclude that compliance at Riverbend would have been limited by the CCR Rules, which, as I stated in my direct testimony, currently do not require any action at Riverbend.

Q. ON PAGE 11, LINES 16-18 OF HIS REBUTTAL TESTIMONY COMPANY WITNESS KERIN ASKS: "WOULD MR. WITTLIFF'S PROPOSED TIMELINE

FOR DAN RIVER CLOSURE UNDER THE CCR RULE HAVE REDUCED CLOSURE COSTS?" ARE YOU CONTENDING THAT ADHERENCE TO THE CCR TIMELINE WOULD HAVE REDUCED DAN RIVER CLOSURE COSTS?

A. No. My contention is that most of the costs incurred to date would not have been incurred prior to September 30, 2018, which ends the period for recovery of actual costs in this proceeding. I do not recommend disallowance of future recovery of reasonably incurred expenditures for Dan River, but do believe costs incurred solely as a result of CAMA should not be recovered in this proceeding.

Q. ON PAGE 12, LINES 11-21 AND PAGE 13, LINES 1-10 OF DEC WITNESS KERIN'S REBUTTAL TESTIMONY, HE IMPLIES THAT YOUR TESTIMONY SUPPORTS THAT THE CCR RULE WOULD HAVE REQUIRED THE COMPANY TO "COMMENCE CLOSURE [AT DAN RIVER] BY MAY 4, 2018." DO YOU BELIEVE THAT IS THE CASE?

A. No. To provide appropriate context for this discussion from my testimony, I quoted Kerin Exhibit 10 (direct testimony Exhibit DJW – 3.1.2) which states "Dan River is subject to CCR rule provisions regarding basin closure. 40 CFR §257.101(b) required a written closure plan by October 17, 2016. On October 11, 2018, it was determined that the Secondary Ash Basin at Dan River did not meet the uppermost aquifer location restriction (40 CFR § 257.60). This results in the basin being required to commence closure pursuant to 40 CFR § 257.101(b)(1)(i) no later than October 31, 2020. The last volume of CCR for beneficial use was removed from the Dan River Primary Ash Basin on April 4, 2018, and, within thirty (30) days, the basin commenced closure pursuant to 40 CFR §

257.102(e)(1)(ii). Pursuant to ¶ 5.e. of the Order Granting Motion for Partial Summary Judgment dated June 1, 2016 (No. 13-CVS-4061), a written Site Analysis and Removal Plan was due by December 31, 2016. Sections 3.(b) and 3.(c) of CAMA require excavation of the Dan River basins, with the ash disposed of in either an off-site or on-site landfill. (Dan River is a high-priority site, with ash basin closure required by August 1, 2019.)"

In his rebuttal, Witness Kerin observes the provision of the Federal CCR Rules [40 CFR § 257.102(e)(1)(ii)] that requires commencement of closure is required within thirty (30) days after the owner: "Removes the final known volume of CCR from the CCR unit for the purpose of beneficial use of CCR." However, Witness Kerin's rebuttal omitted the passage from 40 CFR § 257.101(b)(1)(i)[1] which states:

> The owner or operator of an existing CCR surface impoundment is subject to the requirements of paragraph (b)(1) of this section. (b)(1)(i) Location standard under § 257.60. Except as provided by paragraph (b)(4) of this section, the owner or operator of an existing CCR surface impoundment that has not demonstrated compliance with the location standard specified in § 257.60(a) must cease placing CCR and non-CCR waste streams into such CCR unit no later than October 31, 2020 and close the CCR unit in accordance with the requirements of § 257.102.

From the rationale presented in Kerin Exhibit 10, it is clear that the timeline for removal was set by Order Granting Motion for Partial Summary Judgment (direct testimony Exhibit DJW-5.3.1) dated June 1, 2016 (No. 13-CVS-4061) and Sections 3.(b) and 3.(c) of CAMA (direct testimony Exhibit DJW-4.4). Absent these considerations, the Federal CCR Rules would not have required DEC to begin the removal of CCR for beneficial use before October 31, 2020. Under CAMA, Dan River was designated as a

[1] Source: https://www.law.cornell.edu/cfr/text/40/257.101

HIGH PRIORITY site and directed closure by August 1, 2019. Consequently, DEC was forced to begin required closure work much earlier in order to meet the stated court order and CAMA deadline for Dan River. Closure work could not commence until DEC had removed the final known volume of CCR from the Dan River CCR unit for the beneficial use of CCR. Therefore, the commencement of work required under the CCR Rules at Dan River was directly attributable to the accelerated timeline in the court order and CAMA.

Q. ON PAGE 14, LINES 15-20 OF DEC WITNESS KERIN'S REBUTTAL TESTIMONY, HE STATES: "FOR THE BUCK SITE, ESTIMATED BENEFICIATION COSTS ARE APPROXIMATELY $131 MILLION MORE EXPENSIVE THAN CLOSURE WITHOUT BENEFICIATION ON A TOTAL SYSTEM BASIS. HOWEVER, FOR THE CAPE FEAR AND H.F. LEE SITES, BENEFICIATION UNDER CAMA IS PROVIDING AN ESTIMATED NET SAVINGS COMPARED TO CLOSURE WITHOUT BENEFICIATION OF APPROXIMATELY $703 MILLION ON A TOTAL SYSTEM BASIS." DO YOU AGREE WITH THIS STATEMENT?

A. Absolutely not. First, Mr. Kerin's statement is totally unsubstantiated, and he provides no supporting exhibits. Second, Mr. Kerin does not state whether the "estimated net savings" are in comparison to CCR requirements or other additional CAMA requirements that might have been imposed on Cape Fear and H.F. Lee in place of beneficiation.

Q. DID YOU CONTEND IN YOUR DIRECT TESTIMONY THAT CAMA'S BENEFICIATION REQUIREMENTS ARE UNREASONABLE?

A. I did not, and DEC witness Kerin has provided no citation to back his contention that I have done so.

Q. DID SOUTH CAROLINA CUSTOMERS BENEFIT MORE FROM CAMA THAN THEY WOULD HAVE UNDER FEDERAL CCR REQUIREMENTS?

A. No. On page 14 of my testimony, I included the preamble of the May 14, 2014 version of the North Carolina Coal Ash Management Act (Senate Bill 729) (Exhibit DJW-4.4) as a measure of legislative intent. It is abundantly clear from this language that the members of the General Assembly were concerned about (among other things) (1) six decades of ash mismanagement in North Carolina, (2) the failure and release of CCR into the Dan River in February 2014, and (3) protection of North Carolina surface water and ground water resources for their best usage. Consequently, CAMA was appropriately focused on protecting public health and safety as well as the environment in North Carolina. Accordingly, CAMA includes protections above and beyond what is required in the federal CCR Rules and these protections accrue only to the benefit of North Carolina residents and not to the benefit of South Carolina residents.

Q. WILL YOU UPDATE YOUR SURREBUTTAL TESTIMONY BASED ON INFORMATION THAT BECOMES AVAILABLE?

A. Yes. ORS fully reserves the right to revise its recommendations via supplemental testimony should new information not previously provided by the Company, or other sources, become available.

Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

A. Yes.